THE WAPPETAW CHURCH CASE.

pplemental Bill—Arguments for the Relators; William Whaley, Counsel.

The important question in this cause is, whether the Act of the gislature of South Carolina of the 17th December, 1834, ereby it was enacted that the Act entitled an Act for incorpor-ng the Society for the relief of Elderly and Disabled Ministers d of the Widows and Orphans of the Clergy of the Independent Congregational Church in the State of South Carolina, ratified the 7th March, 1789, be, and the same is hereby repealed, by d with the consent of the said Corporation, *is or is not* constitu-nal. Upon which result depend the two practical questions:

First, whether the donations by the Society in aid of the Circular uch *are or are not* misappropriations of the funds of this charity its Trustees, the Society:

And Secondly, if they are misappropriations, whether there *is* a general right in Equity to follow the Trust Funds *so mis-plied*, into the hands of the Circular Church, a volunteer with ice of the trust.

The origin of this Society is involved in some obscurity as to date, but its design and its objects are manifest to all who will k into its early history.

Some time previous to 1789, a number of pious persons belong-g to the Independent or Congregational Church in the State of uth Carolina, imitating the example of the Episcopal Church, d having a living instance before them of the necessity of such Association, in the person of the Rev. Josiah Smith, a disabled esbyterian Minister, who had labored for their spiritual benefit their own vineyard, associated themselves together for the sole rpose of raising a fund and establishing a charity; out of which assurance of aid and relief would be guaranteed for all time to ir elderly and disabled Ministers while living, and a suitable ovision for their Widows and Orphans when dead.

As it is an obligation of the Gospel" they say in their Preamble, "on Chris-s of all DENOMINATIONS to encourage and support ITS *Ministers*, who are THEIR tors in the Lord; and as it appears to US that due encouragement may be more TAINLY and EXTENSIVELY provided and secured, by adding to the usual sup-afforded to Gospel Ministers during their health and usefulness, an assurance

of aid and relief when they are disabled for the services of God's VINEYARD, and provision for their Widows and Orphans when they are removed, without leavi them a competent support, we, the subscribers, therefore desirous of carrying th good purpose into effect, and of testifying our regard to them, who have faithful labored amongst *us* in the Gospel, do hereby solemnly associate and bind ou selves under the following rules:

Such were the sentiments which kindled up that bright flame Christian charity; such were the sentiments which moved th benevolent hearts and the wise understandings of Drs. Holling head and Keith with their associates; so as to determine the that this good deed should not be done in a corner; that it shou not pass away with their day and generation, or be limited to the own Congregation, but that for all time and for all Ministers wh should labor for them and become old or disabled, or die poo leaving needy families, this assurance of aid and relief, and future provision should be firmly granted and perpetually esta lished. It was then and under such circumstances, that this Ass ciation in 1789, presented themselves before the Legislature South Carolina; with their petition:

"*To the Honorable Jacob Read, Esq., Speaker, and the rest of the House of Rep sentatives in General Assembly met:*

"The humble petition of the subscribers sheweth, That your petitioners a many others have taken into their serious consideration the distressed situati in which Elderly and Disabled Ministers, and the Widows and Orphans of t Clergy of the Independent or Congregational Churches are frequently placed left, and are desirous to associate themselves together for the purpose of esta lishing a fund for their benefit.

"That your petitioners conceive their design would be more effectually promot by their being incorporated; which would enable them to appropriate their fun to greater advantage, and to conduct their affairs with greater certainty than th otherwise could do.

"Your petitioners therefore pray that your Honorable House would be pleased pass a law for incorporating them as a Society by the name and style of T Society for the Benefit of Elderly and Disabled Ministers, and of the Widows a Orphans of the Clergy of the Independent or Congregational Churches in State of South Carolina; and that the said Society may have all the privile usually annexed to an incorporation.

"And your petitioners will ever pray, &c."

This Petition, expressing the same sentiments and ackno edging the same objects, prays an act of Incorporation, t their designs may be more effectually promoted, that their fu may be applied to greater advantage, and that their affairs m be conducted with greater certainty, and that their charity m be perpetual. Such was the avowed purpose of these Petit ers. They asked no pecuniary aid; they desired no directi as to how their funds should be applied, or as to whom th beneficiaries should be; they were only solicitous that the Sy-

reign Power should bestow that immortality which they alone ould bestow upon the artificial being which they desired to reate, and invest that being with power to dispense such aid s they had collected, to such persons as they should direct, r all time. The Legislature granted the prayers of the Peti- oners and passed an Act in precise conformity with their views nd wishes.

"Whereas, William Hollingshead, Isaac S. Keith, and Josiah Smith, with ndry other members of the Society for the Relief of Elderly and Disabled Min- ters, and of the Widows and Orphans of the Clergy of the Independent or ongregational Church in the State of South Carolina, by their petition to the eneral Assembly, have set forth, that they had, with many others, taken to their serious consideration, *the distressed situation in which Elderly and isabled Ministers, and the Widows and Orphans of the Clergy of the Inde- ndent or Congregational Churches were frequently placed and left*, and had there- re associated themselves together for the charitable purpose of establishing a nd towards their relief; but the petitioners are of opinion that so benevolent a esign would be more effectually promoted by their being incorporated; they herefore humbly prayed that a law might be passed for incorporating them as a ociety, by the name and style of "The Society for the relief of Elderly and Disabled linisters, and of the Widows and Orphans of the Clergy of the Independent or ongregational *Church in the State of South Carolina*," and that they might have ll the privileges usually annexed to such an incorporation.

"*Be it therefore enacted by the Honorable the Senate and House of Representatives ow met and sitting in General Assembly, and by the authority of the same*, That he Society above mentioned, and the persons who now are, or shall hereafter be embers thereof, and their successors, officers, and members of it, shall be, and ey are hereby declared to be, one Body Corporate, in deed and in name, by the ame of "*The Society for the Relief of the Elderly and Disabled Ministers, and of the Widows and Orphans of the Independent or Congregational Church in the State of outh Carolina; and by the said name shall have perpetual succession of Officers nd Members*, and a Common Seal, with power to change, alter, break, and make ew the same, as often as the said corporation shall judge expedient; and the said orporation and its successors shall be able and capable in law to purchase, hold, ave, receive, enjoy, possess, and retain to itself, and its successors, in perpe- uity, or for any term of years, any estate or estates, lands, tenements or heredita- ents of what kind or nature whatsoever, and to sell, alien, exchange, demise, lease the same, or any part thereof, as it shall think proper; and by its said ame to sue and be sued, implead and be impleaded, answer and be answered nto, in any Court of Law or Equity in this State; and to make such rules and -laws (not repugnant and contrary to the laws of the land) for the benefit and vantage of the said corporation, and for the order, rule, good government, and anagement of said corporation, as shall from time to time be agreed upon by a ajority of the members of the said Society.

"*And be it further enacted by the authority aforesaid*, That it shall and may be vful for the said corporation hereby erected to take and to hold to itself and to successors forever, any charitable donations, or devises of lands and personal ate, and to appropriate the same for the benefit of said corporation, in such nner as may be determined by a majority of the members thereof.

"*And be it further enacted by the authority aforesaid*, That the said Corporation

shall be, and is hereby declared able and capable in law to have, receive, enjoy possess, and retain all such estate, real and personal, money, goods, chattels, and effects, which it is now possessed of, or entitled unto, or which has already been given, devised, or bequeathed to it, by whatever name such devise or bequest may have been made.

"*And be it further enacted by the authority aforesaid*, That this Act shall be deemed and taken as a public Act, and notice shall be taken thereof in all the Courts of Justice and elsewhere in this State, and it shall be given in evidence on the trial of any issue or cause, without special pleading.

"*Seventh day of March Anno Domini* 1789."

It is here seen that the Act of 1789 created a corporation of the persons who were then, and should hereafter become members of the Society for the relief of Elderly and Disabled Ministers and of the Widows and Orphans of the Clergy of the Independent or Congregational Church in the State of South Carolina, and their successors, officers and members, as one body corporate, in deed and in name, "By the name of the Society for the relief of Elderly and Disabled Ministers, and of the Widows and Orphans of the Clergy of the Independent or Congregational Church in the State of South Carolina."

The Preamble to this Act recites that this charter was granted upon the petition of William Hollingshead, Isaac S. Keith and Josiah Smith, with sundry other members of the Society, "who had taken into their serious consideration, the distressed situation in which Elderly and Disabled Ministers and the Widows and Orphans of the Clergy of the Independent or Congregational Churches were frequently placed and left, and had therefore associated themselves together for the charitable purpose of establishing a fund for their relief." It was upon that statement and for that purpose alone, that the charter of 1789 was applied for by the Petitioners, and granted by the State; from this statement, it is known, that Drs. Hollingshead and Keith, with the Rev. Mr. Smith and others, became the founders of this charity; that they themselves either subscribed *the funds* necessary for the purpose, or collected them from other pious persons, their friends. At all events they and their associates were at that time the legal owners of the property or funds of the Society, (come from what quarter it may) they had the entire control over them and the absolute right to dispose of them in such manner as they deemed fit. Vested with these rights both as to the fund and its disposal, they themselves applied to be incorporated, that they and their successors might have the perpetual right, as Trustees of their own charity, of applying their own funds according to the laws of its foundation. The Act of 1789 established them by charter as such a Corporation, with a

erpetual existence; with power to purchase and dispose of estate eal and personal; with power to take and hold charitable donations nd devises of land and personal estate, and to appropriate the ame for the benefit of the said Corporation and with power to njoy, possess and retain whatsoever it was then possessed of or any way entitled to. By this Act of 1789, *the sole beneficiaries* f the charity *so founded* were the Elderly and Disabled Ministers nd the Widows and Orphans of the Clergy of the Independent or Congregational Churches in the State of South Carolina. *The Society* so incorporated, became *Visitors* and *Trustees* of the harity. The Legislature by its charter gave no donation in land r money, they only bestowed on an Association already formed, ith a fund in their possession and with purposes and objects *efore declared* and *definite,* a corporate existence with such privieges and immunities as would enable the Society to more effectually romote their benevolent designs, to appropriate their funds to etter advantage for the objects of their bounty, and to conduct heir affairs with greater certainty. For a period of certainly orty-six years and perhaps seventy years, did this Society exist s it had been called into existence, without intrusion or molestaion, dispensing whenever an opportunity offered, its charities ccording to the laws of its foundation, and it has been proved hat those laws were fully known to, clearly recognized, and roperly understood both by the Society, (the Trustees) and the Circular Church, from 1789 until 1834, when the Legislature by s Act passed 17th December, 1834, repealed the Act of 1789.

They thus petitioned: "*To the Honorable the President and Members of the Senate:* "The petition of the members of the Society for the Relief of Elderly and Disbled Ministers, and of the Widows and Orphans of the Clergy of the Independent Congregational Church in the State of South Carolina, respectfully shew: That the period of their incorporation, in the year of our Lord seventeen hundred id eighty-nine, and up to a recent date, the Circular and Archdale Churches mposed but one congregation, under the corporate name and style of "The Indendent or Congregational Church in the City of Charleston;" That in consenence of a separation of said Churches into two distinct and separate congretions, the Circular Church still retaining the original corporate name, and the rchdale Church having since been incorporated by the name and style of "The cond Independent or Congregational Church in the City of Charleston," it has come necessary for your petitioners to apply to your Honorable Body for an *endment* of their charter, *so that the name* of the said Society shall be *slightly ered*, and a *discretionary* power given to your petitioners to apply their funds *such charitable, benevolent, religious, and other purposes* as may *not be incomible* with the objects of the Society, and shall contribute more effectually to the complishment of the same.

"Your petitioners therefore pray that the *name* and *style* of the Society be so *altered* and *amended* as to read thus: "The Society for the Relief of Elderly and Disabled Ministers, and of the Widows and Orphans of the Clergy of the Independent or Congregational Church *in the City of Charleston*;" and that *power* be given to your petitioners to apply their funds *discretionarily* to *such* charitable, benevolent, religious, and *other* purposes *as* may *contribute* to the *welfare* of said *Church and Corporation.*

"And your petitioners will, as in duty bound, ever pray," &c.

"AN ACT *to amend the Charter of the Society for the Relief of Elderly and Disabled Ministers, and of the Widows and Orphans of the Clergy of the Independent or Congregational Church, in the State of South Carolina.*

"SEC. 1. *Be it enacted by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same,* That the Act entitled "An Act for incorporating the Society for the Relief of Elderly and Disabled Ministers, and of the Widows and Orphans of the Clergy of the Independent or Congregational Church, in the State of South Carolina, ratified on the seventh day of March, seventeen hundred and eighty-nine be, and the same is hereby repealed, by and with the consent of the said corporation.

"SEC. 2. *And be it further enacted by the authority aforesaid,* That the persons and members of the Society hitherto known by the name of the Society for the Relief of Elderly and Disabled Ministers, and of the Widows and Orphans of the Clergy of the Independent or Congregational Church, in the State of South Carolina, and their successors, officers and members, shall be hereafter, and they are hereby declared to be, one body corporate, in deed and in name, by the name of "The Society for the Relief of Elderly and Disabled Ministers, and of the Widows and Orphans of the Clergy of the Independent or Congregational Church in the City of Charleston;" and by the said name, shall have perpetual succession of officers and members, and a common seal, with power to change, alter, break, and make new the same, as often as the said corporation shall judge expedient; and the said corporation and its successors, shall be able and capable in law, to purchase, hold, have, receive, enjoy, possess and retain to itself and its successors, in perpetuity, or for any term of years, any estate or estates, lands, tenements, heriditaments, of what kind or nature whatsoever; and to sell, alien, exchange, devise, or lease the same, or any part thereof, as it shall think proper, and by its said name, to sue and be sued, implead and be impleaded, answer and be answered unto, in any Court of Law or Equity in this State; and to make such rules and bye-laws (not repugnant and contrary to the laws of the land) for the benefit and advantage of the said corporation, as shall from time to time be agreed upon by a majority of the members of the said Society.

"SEC. 3. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said corporation hereby erected, to take and to hold to itself and to its successors forever, any charitable donations, or devises of lands and personal estates, and to appropriate the same, as also all other their funds, real and personal, to such charitable, benevolent, religious, and other purposes, for the benefit of said corporation, and of the said Independent or Congregational Church in the City of Charleston, in such manner as may be determined by a majority of the members thereof.

"SEC. 4. *And be it further enacted by the authority aforesaid,* That the said corporation shall be, and is hereby declared able and capable in law, to have, receive, enjoy, possess, and retain all such estate, real and personal, money, goods, chattels, and effects, which it is now possessed of, or entitled unto, or which

has already been given, devised or bequeathed to it, by whatever name such devise or bequest may have been made.

"Sec. 5. *And be it further enacted by the authority aforesaid,* That this Act shall be, and continue in force, for the term of twenty-one years, and shall be deemed and taken as a public Act.

"*In the Senate House, the seventeenth day of December, in the year of our Lord one thousand eight hundred and thirty-four, and in the fifty-ninth year of the Sovereignty and Independence of the United States of America.*"

In this petition the Society pray for an amendment of the charter of 1789, in these particulars, viz: so that the name of the Society may be slightly altered, and that a discretionary power may be given to the Society to apply their funds to such charitable, benevolent, religious and other purposes as may not be incompatible with the objects of the Society, and which shall contribute more effectually to the accomplishment of the same. The recital states that the amendment has become necessary from a schism in the united congregation worshipping at the Churches in Meeting and Archdale streets, and that a division had taken place, and the Church in Archdale street had taken the name of, "The Second Independent or Congregational Church, in the City of Charleston." The prayer of this petition does not accord with the recital and the alleged causes for an amendment of the charter, but pray that a different name may be given to the Society, viz: "The Society for the Relief of Elderly and Disabled Ministers, and of the Widows and Orphans of the Clergy of the Independent or Congregational Church *in the City of Charleston,*" "and that power be given to your petitioners to apply their funds *discretionarily* to *such* charitable, benevolent, religious and *other* purposes as may contribute to the welfare *of the said Church and corporation.* Upon this petition, the Act of 1834 was enacted. The Rubric recites it to be "An act to amend the charter of the Society for the Relief of Elderly and Disabled Ministers and of the Widows and Orphans of the Clergy of the Independent or Congregational Church in the State of South Carolina." This Act has no preamble.

Sec. First Repeals the charter of 1789, by and with the consent of the said corporation.

Sec. Second Incorporates anew the same persons and members which constituted the old Society by the new name of, "The Society for the Relief of Elderly and Disabled Ministers and of the Widows and Orphans of the Clergy of the Independent or Congregational Church in the City of Charleston," with power to purchase and to sell any estates, real or personal, to make such

rules and by-laws (not repugnant and contrary to the laws of the land) for the benefit and advantage of the said corporation, as shall from time to time be agreed upon by a majority of the members of the said Society.

Sec. Third: Provides that it shall be lawful "for the said corporation hereby erected to take and hold to itself and its successors forever, any charitable donations, or devises of lands and personal estates, and to appropriate the same, *as also all other their funds, real and personal, to such charitable, benevolent, religious and other purposes, for the benefit of said corporation,* and *of the said Independent or Congregational Church in the City of Charleston, in such manner as may be determined by a majority of the members thereof.*

Sec. Fourth: Transfers the property of the old corporation to the new one, to wit: "That the said corporation shall be and is hereby declared able and capable in law, *to have, receive, enjoy, possess and retain all such estate, real and personal, money, goods, chattels and effects, which it is now possessed of or entitled unto, or which has already been given, devised or bequeathed to it,* by whatever name such devise or bequest may have been made."

Sec. Fifth: Limits the charter to a term of twenty-one years, and declares this act a public act. Now, if the Legislature can make such changes in the vested rights of individuals or corporations, it can take away those rights altogether. The power which can do a part can accomplish the whole. The decree on the original bill decides the following points in the general cause, and a statement of them here will aid the argument.

Attorney Gen'l, vs. The Clergy So. 8 Rich. Eq. p. 190.

I. That a charity may be created not only for the benefit of *those* who may be in existence (communities or individuals,) but also for *those* who may afterwards come into existence or qualify themselves to become objects of the bounty.

II. That this Charity was founded on charter, for the Elderly and Disabled Ministers and of the Widows and Orphans of the Clergy of the Independent or Congregational Church in the State of South Carolina, *as a denomination.*

III. That the Act of 1789 is the foundation of the Charity, and was not repealed by the Act of 1834, but amended so as to change the corporate name of the Society, enlarge the powers of the trustees, and to limit its corporate existence to the term of twenty-one years but not to limit its *benefits to the Church in the City of Charleston alone.*

IV. That the Wappetaw Church is an Independent or Congre-

gational Church in the State of South Carolina, and *within the scope of this Charity.*

V. That this Court has jurisdiction to entertain this information at the relation of the Wappetaw Church; and that the relators have such an interest as to entitle them to be a party to these proceedings.

These points, although decided, have been remade in the defendant's answers; and although I do not entertain the idea that they will be re-opened and reviewed under these proceedings, I will, in the course of this argument, notice them in a general way, as they more or less affect the important issue.

The general positions taken by the defendants, and upon which they chiefly rely to sustain their defence to the relator's complaint, are these:

First. That the Legislature can constitutionally annul or modify the charter of an eleemosynary corporation with its own consent, so as to enlarge the scope of its charity.

Secondly. That even if the Legislature had not the power, *constitutionally*, to amend the charter of the said Society, as it has done by the Act of 1834, yet the Society having kept within the purview of that act in the appropriations complained of—that the State is estopped from arraigning the said Society through her Attorney General, or on the relation of a relator, for a breach of trust.

Thirdly. That no one is competent to arraign this Society, or these defendants, in this Court, for a breach of trust except some *founder, donor, or beneficiary,* entitled to or interested to make the question.

Fourthly. That the Act of 1834 is *constitutional* and *legal,* and *not* within the purview of the provisions of either the State or United States Constitution prohibiting the passing of laws impairing the obligation of contracts.

Fifthly. That the said Society being, by virtue of its incorporation, in law the assignee of all persons, dead or living, who stand to it in the relation of founder or donor, and the only contracting party with the State whose consent was legally and constitutionally necessary to a *repeal* or amendment of the charter of *the said Society.*

With this opinion as to their legal rights, the Society applied to the Legislature of South Carolina *for a repeal of the Act of* 1789, and upon that application *the Charter of* 1789 was *repealed,* and

the Charter of 1834 *granted in lieu thereof.* If the *Act of* 1834 is constitutional and valid, the old corporation created by the Charter of 1789 has been abolished, and a new corporation created in its stead; and to this new corporation the Legislature has transferred all the property, privileges and immunities of the old. It has been said that these corporations are the same, but that the corporation created by the Act in 1834 is distinct from the corporation created by the Act of 1789, is easily ascertained from the fact, that they are different in every essential necessary to the legal existence of a corporation. The essentials by which a corporation is recognized in law as one body politic, are its name, powers, rights and duties. Although in this case the same individuals were re-incorporated, the two corporations have different names, different powers, different uses, and different beneficiaries. Before the Corporation of 1834 came into being, the Corporation of 1789 had ceased to exist. The Act of 1834 itself declares the Act of 1789 to be repealed, and proceeding upon that view of the case—that the old corporation was at an end, and that all its functions had ceased—incorporates the new Society, transfers to it all the property of the old Society, and gives them power to use the funds so transferred for the benefit of objects foreign to the foundation of 1789. Although it has been decided that the Act of 1834 was an amendment of the Act of 1789, the effect of which was to change the corporate name of the Society, enlarge the powers, and limit the charter to twenty-one years; but *not* to limit *its benefits* to the Church *in the city of Charleston alone.* It is manifest *that this act does impair the rights, destroy the vested uses of the beneficiaries, the cestui que trusts,* and invade the property and powers of the Society under its original charter as a corporation, and as the trustees of a charity. There can be no question that, under the Charter of 1789, the Society became the legal owners of all the property acquired under that charter, and so far as to pass the legal estate, were the assignees of the donors or founders; and neither is it to be questioned that the ownership in the property, and the acquiring the legal estate, was coupled with a trust for the use of *the beneficiaries,* and *for that purpose alone,* between which and any ordinary assignment for the benefit of creditors, or for the issue of a marriage under a deed of marriage settlement, *there is no difference,* in law or in equity.

The Act of 1834 admits to the full benefit of the whole trust fund, a *beneficiary* in no way mentioned or alluded to in the charter

of 1789, the Circular Church; and *it does more than that:* it gives the Society the power, whenever a vote of a majority of its members could be obtained, to transfer the entire fund of the Society to the Circular Church, and when its limited charter shall expire, to make no application for a recharter, and *thus* to allow this noble charity to cease to exist.

If the beneficiaries under the charter of 1789, have any legal rights and interest in this charity, and it has been decided that they have; this thrusting the Circular Church upon them as a beneficiary; this compelling them to admit the Circular Church to the full benefit of their property against their will and without their consent, by the legislature, is a violation of those rights as complete and entire, as if they had admitted the Charleston Theatre Company as a beneficiary. The act changes the whole corporation; it changes corporate powers and franchises, and transfers corporate property. It changes the name of the corporation and it creates new beneficiaries. The Act of 1789 had one class of beneficiaries, the Elderly and Disabled Ministers and the Widows and Orphans of the Clergy of the Independent or Congregational Church in the State of South Carolina. The Act of 1834 abolishes *that class* and substitutes in their place *the Circular Church*, and *the Circular Church alone*, for by that act a majority of the members of the Society have the power to appropriate the funds of the Society to the benefit of the church, *without any limit or restriction*, and *they*, the Society, claim that the only ministers entitled to relief from the funds are the ministers of the Church in Charleston, in exclusion of the other churches of like faith in the State. It is to this corporation that the Legislature and the Society have *surrendered* the funds collected by Drs. Hollingshead, Keith and others, the original donors, in utter disregard of the uses for which they were originally intended, and in direct violation of the laws of its foundation.

It will be contended by the relators that the act of 1834 is *unconstitutional and void.*

First. Because it is repugnant to the constitution of the State of South Carolina, and of the United States, inasmuch as it impairs the obligation of a contract. *And secondly.* Because it denudes a trust, and a trustee cannot consent to surrender his trust or destroy the trust property, or apply it to other uses, unless permitted in the original trust deed, or by order of the Court of Chancery, or with the consent of *all of the cestui que trusts.* To fully

understand this case, it is necessary that we inquire into the nature and character of the corporation created by the act of 1789; for there is no question more clearly settled than that the Legislature has more power over some corporations than others, and that there are many kinds of corporations. A municipal corporation may be changed as convenience may require, provided the rights of private property are respected and protected, which is not the case with *eleemosynary corporations*. The act of 1789, created *a lay eleemosynary corporation*. It established a private charity, founded by private individuals, upon a charter obtained at their own request and upon their own petition, setting forth their own will and for the purpose of the better and more lasting management of their own bounty according to that will. "The eleemosynary sort of corporations are such as are constituted for the perpetual distribution of the free alms or the bounty of the founder of them, to such persons as he has directed; of this are all hospitals for the poor sick and impotent, and all colleges, both in our universities and out of them." This Society is, then, a private eleemosynary corporation for the management of a private fund, according to the will of the founders or donors. The charter makes the trust perpetual, but does not change the nature of the charity. In such cases, an association of benevolent persons desire to give a portion of their substance to some particular charitable purpose, and they wish that their bounty may be continued long after they shall have passed away. Sensible of the uncertainty of individual life, they neither leave this object to their heirs or devisees, nor do they appoint trustees by a deed, but they turn to what, in all human probability is more certain and lasting, to that artificial being called a corporation, *the offspring of the law*, and invoke the aid of the State to perpetuate their beneficent intention by granting a charter, under which *that offspring of the law* would be their trustee to perpetuate their charity, and to dispense their bounty to such objects as they have therein designated for all time. This charter is effected either by incorporating the persons for whose benefit the fund is given, or those who are to be trustees of the charity, or, *as in this case, the donors themselves*. The general law regulating charities is: That those who give the revenues are *the founders*. The charter expressing the will of the donors is *the foundation*. The corporators having the supervision of the charity, are *its visitors*, and managing the revenues, are *the trustees*. Those for whose benefit the funds are given, are *the beneficiaries, cestui que trusts*, and *have of right certain important uses* and *equitable* interests in

1 Black. 467.

the funds of the Charity, *under and by virtue of the charter.* The leading case in England is the Attorney General *vs.* the Governors of the Foundling Hospital; and the leading American case, the Dartmouth College case. It has been well said "that in early times it became a maxim, that he who gave the property might regulate it in future." Although the charter proceeds from the State, it is considered as the will of the donors; it is granted upon their application; it is imposed by them upon those who are to succeed them in the management, as the law of its foundation for all future time. The State granting the charter and not furnishing the fund, is in no way the founder. "The gift of the revenues is the foundation"—Phillips *vs.* Berry, 1 Blackstone 480, Commentaries.

2 Vesey, Jr., 42.
4 Wheaton, 518.

"Where there is a charter vesting proper powers of government in Trustees or Governors, they are visitors; and there is no control in anybody else, except only that the Court of Equity or of Law will interfere so far as to preserve the revenues and prevent the perversion of the funds and keep the visitors in their prescribed bounds." Such are eleemosynary corporations. The revenues are private funds, and there are generally many donors who obtain a charter comprising the names of all or some of them with a right of succession; *and in that manner, was this Society established as a body corporate* and it is those very funds which were given or collected by Drs. Hollingshead, Keith, Smith and associates that the Legislature of South Carolina have taken away from the objects of their Bounty and given to the Circular Church. When Drs. Hollingshead and Keith collected these funds and established this charity *for the Benefit, the sole Benefit* of the Elderly and Disabled Ministers and of the Widows and Orphans of the Clergy of the Independent or Congregational Church *in the State of South Carolina* and secured it to them *in perpetuity* by a charter solemnly granted to them by the State of South Carolina, they nor any one else at that time would have supposed, *That that charter was at the pleasure of the corporators,* and that the corporators could at any time upon an application to the Legislature *have it repealed* upon surrendering their trusts and *have the funds applied to other uses and for other beneficiaries.* They could never have believed that that charter secured *no inviolable legal rights to their beneficiaries;* or they would have confided *their trust* in their heirs, or in some other persons in whom they had a personal confidence, or they would have left it in hands of this Honorable Court, which never permits a trust to fail for the want

1 L. Ray. 5.
1 Bl'k. Com. 480.
1 Vesey, 472. Green vs. Rutherford.

of a Trustee, and which *has repudiated the cy pres doctrine* as it
2 Rich Equity exists in England. The Attorney General *vs.* Jolly. They never could have believed that there existed *any legal right or power*, in the very visitors that they themselves had appointed, to destroy *their charity* and give *their funds* to the Circular Church. If such had been the case, they certainly would have given their funds to that corporation directly and superceded any necessity for the charter of 1789. The individual rights of the beneficiaries in all such charities as this, are always uncertain, for no one can tell who will be an individual beneficiary until one actually exists, but as a class (descriptio personarum) they have important, fixed and certain rights and interest in the revenues of the charity, for although it may be impossible to tell what individual minister will be entitled to the uses of the charity, all ministers of those churches have an equitable interest in the fund, for as soon as there is a disabled minister *he is entitled of right, secured by charter, to be a beneficiary.* This uncertainty is of the very nature of charity; as soon as it loses that essential, it ceases to be benevolence and becomes a common gift, a gratification of feeling, but not that benevolence which proceeds from love to humanity. In eleemosynary corporations, such as we have described, the beneficiary, whether *in existence or not*, is entitled to the uses. It is one of the general laws of trusts that a fund may be created or an estate conveyed for the use and benefit of persons not in being at the time of the conveyance. "Such is the case in marriage settlements with power to devise"
Binney. Vidal vs. Girard. or appoint. "Where is the estate beyond *the life until the power* is executed. It rests in no one." A charitable use is only a power of appointment, and the disabled ministers have a good right to the use. If the Trustees should refuse any proper beneficiary, Chancery would compel them to carry out their trust; as to that principle, see 3d Pere. Williams 146.

The time when the *cestui que trust* shall take *is fixed.* Whenever they become old and disabled, and whenever there are widows and orphans of such elderly and disabled clergy. It is true, that no one has a right to claim until they fall into that description of person; but that is so with many other trusts of private property; for instance, where there is a power to name some one of kin to take, a remote relation may be selected. "Uncertainty is indis-
Binney. pensable to all charities. If any one has a right to claim by law, it ceases to be a charity." The property of this Society is private property, vested in the corporators by the charter as Trustees, to

be administered by them according to the will of the donors, as expressed in the charter, and for the use of the beneficiaries therein appointed. The common law of the land, gives every one a right to dispose of their property in any manner they may select, not contrary to the laws of the land; *and when* persons have disposed of their property for benevolent purposes, and the State has invited them so to do, by giving perpetuity to their scheme, *under its charter or grant*, in strict conformity with their will and pleasure *as donors*, "to rescind that contract and seize on the property is not *law, but violence.*" When this Association applied to the Legislature for a charter, it was then for the State to say *whether and upon what terms*, it would grant them the charter; but when once granted, the Legislature had no more power and control over the matter, and *the charter* became a constitutional right, sacred and inviolable, *until forfeited.* I do not suppose that any one would assert the doctrine, that this Court, a co-ordinate branch of our government, could apply the funds of this charity contrary to the foundation, or do any act by which the revenues were surrendered and destroyed. I *take it to be law*, that there is no difference whether the trust be created by deed, will, or by charter; that the trust when created, is protected by the Constitution from all invasion by either the Legislature or Judicial branches of the government. The charter does not change the nature of the charity. In the Attorney General *vs.* Pearce, it was held "that the Crown cannot make a charity more less public, but only more permanent than it would otherwise be." The object of a charter and of endowing it, is to keep its property, private property, and clothe it with all the security of private property. The intent is, that there should be *a legal private ownership*, which would maintain and protect the property for the benefit of those for whose use it was designed. The Legislature of South Carolina, by the Act of 1834, has exercised the power of controlling this fund. They recalled *the old charter* and granted *a new one;* they have taken the revenues from *the old beneficiaries* and given them to *the new.*

Webster.

2 Atk. 87.

I have shown the nature and character of this Charity, and that the trustees possessed vested rights, privileges and immunities, coupled with *sacred trusts*, and that the beneficiaries have also *important interests and rights under the charter of* 1789; and that those rights, privileges and immunities, once lawfully obtained, are as inviolable as any other right of property.

If such be the true nature of the charter and of the rights of the respective parties to it, the Act of 1834 infringes the second section of the ninth article of the Constitution of the State of South Carolina, which says, "That no freeman of this State shall be taken, or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or by the laws of the land. Nor shall any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, ever be passed by the Legislature of this State." *The beneficiaries*, under the Charter of 1789, had legal rights and equitable interests in the funds of the Society. They had acquired property, or rather the uses of property, under the charter. The charter was a grant by the State in their behalf, and they were just as much entitled to the uses and benefits derived from it *as property*, as any other property they might have; or if the grant had comprehended *land*, instead of *uses under a trust*. The Act of 1834 recalls the Charter of 1789, deprives these beneficiaries of all their rights of property, privileges and immunities under it, and appropriates the funds to new uses and for new beneficiaries. The beneficiaries cannot now enjoy the benefits which were originally intended for them by the founders of the Charity. The Act of 1834 has placed it in the power of a majority of the new corporation to appropriate the entire fund to the Circular Church and *its pastors:* by which all the other Churches are deprived of their rights. *The first part of the third section* of the ninth article says: That no freeman shall be deprived of his property but by the judgment of his peers or by the laws of the land. Now this Act of 1834 deprives all the other Independent or Congregational Churches now in the State, or to be hereafter in the State, of *their property* in these funds, without a judgment by their peers or by the laws of the land. I do not presume that any one will deny that the right to the uses of or in the funds granted by the charter to the *cestui que trusts, are property*, and as much so as that bestowed on any other *cestui que trusts* by a deed or will, individuals or corporations. By this act the Legislature has declared that the old charter was forfeited, and has resumed its grant once granted. It has done so without a trial; no judgment of the peers had been pronounced upon it. The parties have been deprived of their property. This is a judicial act, only to be performed constitutionally by a co-ordinate branch of the Government. It is not in the power of the Legis-

lature to do it; and in this case they have even gone further: they have not only deprived these parties of their property, but they have given it to others. If the constitution means anything when it says that no one shall be deprived of his property without a judgment of his peers, this Act is a violation of that part of our solemn compact, which requires that all such questions are to be tried by the laws of the land. Now, is this Act within the spirit and letter of our constitution as a law of the land?—to ascertain which, we must see what are laws of the land.

First. "It is a rule, not a transient sudden order from a superior to, or concerning a particular person, but something permanent, uniform and universal; therefore a particular Act of the Legislature to confiscate the goods of Titus, or to attaint him of treason, does not enter into the idea of a municipal law; for the operation of this act is spent upon Titus only, and has no relation to the community in general." Mr. Webster, in his Dartmouth College speech, says, that "Lord Coke is equally decisive and emphatic, citing and commenting on the celebrated 29th chapter of *Magna Charta*, says, 'no man shall be disseized out, unless it be by the lawful judgment, that is, verdict of equals, or *by the law of the land*, that is, (to speak at once for all,) *by the due course and process of law.*'" We here see from these great authorities what is meant by the law of the land—*that it means due course and process of law*—that is, the general law. The law which is already known and established, and is applicable to every individual in the State; a law which proceeds upon notice, hears all parties in interest upon the trial, and pronounces its judgment after a full trial. That is the meaning in the Constitution, when it says by the laws of that land, and that is the meaning when it says that no freeman shall be deprived of his property, but by the laws of the land, and that every freeman shall hold his property protected by the general laws which govern the land. If Lord Coke, if Mr. Webster, is right, if the Supreme Court of the United States is right, "every thing which may pass under the form of an enactment is not therefore to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees and forfeitures, in all possible forms would be the law of the land." Such construction would render the Constitution a dead letter, and would establish and concentrate all the powers of the government in one

1 Black. 44.

Co. Ins. 46.

Webster.

of its branches. We would have no permanent laws to live under, and every man's life and property would be subject to the prejudices or enmities of a majority. The Judiciary would cease to exist but in name, and the Judges would no longer declare the law and administer the law, but they would only declare what the Legislature had enacted. We will now ask the question, has the charter of 1789 been taken away, and have the *cestui que trusts* lost their rights and interests under it according to the laws of the land? Even if this could be made to appear, would the Legislature have the right to give the funds to others, being charitable funds which did not belong to them, when they were appropriated by them under the Act of 1834, and which never did belong to them at any time, and which was secured by their previous charter expressly against the State forever? There could be but one answer to the question—that there has been no forfeiture or misuse. There has been no trial, no judgment, no proceeding, according to the laws of the land, and *yet* the Act of 1789, *a charter*, a *grant* from the State, solemnly granted, under which the power to hold property has been acquired, and the right to enjoy property given, has been recalled, repealed, and a new grant issued. It has been contended that the Act of 1834 does not repeal the Act of 1789. I think it does; but if it does not, it essentially impairs it, and no one will say but that if the Legislature can lawfully do what it has done, it may do whatever it may choose in relation to the corporation, its funds, and its beneficiaries. If then the Society, established by the Act of 1789, is a lay eleemosynary corporation, a private charity, its property, private property, and if the corporation are trustees and take a legal title to hold the property for the benefit of the *cestui que trusts*, and if the *cestui que trusts* have any vested rights and equitable interests in the funds and property of the Society, secured by that charter, (1789,) this act has violated that property, has taken away those vested rights and equitable interests. In either way they may be regarded, for in both cases they are entitled to the protection of this Court. It denies the *cestui que trust* the right to the protection of the law and of this Court to compel the trustees to a faithful execution of the trust, and to enforce the will of *the donors*. I think it is admitted law, that the State, by its Courts of Law or Equity have the power to enforce the will of the donors, and to compel a faithful execution of the trust. That they have also the power to declare a forfeiture for nonuses or misuses, and under the Constitution of the State, there is no lawful power

anywhere else which can deprive the trustees of their rights and interest; and in these respects the Act of 1834 is void, inasmuch as it is against the Constitution of the State of South Carolina.

The relators will further contend, the Act in question is repugnant to the last clause in the same article of the Constitution of this State, and to the 10th section of the first article of the Constitution of the United States. The material words in the State Constitution are as follows: "Nor shall any bill of attainder *ex post facto* law, or law impairing the obligation of contracts, ever be passed by the Legislature of the State," and in the Constitution of the United States. "No State shall pass any bill of attainder *ex post facto* law, or law impairing the obligation of contracts." The important words in both Constitutions are the same, showing that as far as this State was concerned, both in her Federal and State governments, that that principle of sound legislation was deemed essential to her social compact. To be secure in person and property, to have that security established upon fixed principles and governed by the laws of the land, *is the foundation* of Society, and the great constitutional bulwark of American liberty. *That the Act of* 1789 *is a grant*, and *that the grant* is a contract, and that a contract of that kind *is one*, that is, within the meaning of both the State and the United States Constitutions, are questions which have been fully decided in the Dartmouth College case, and it would be presumption to say anything upon that head; so I will regard those propositions as settled law, and pass to the question, if the Act of 1789 be a contract, does the law of 1834 impair its obligations? What is a contract?—"a transaction between two or more persons, in which each party comes under an obligation to the other, and each reciprocally acquires a right to whatever is promised by the other." A corporation is defined by Blackstone, "to be a franchise." To this grant there are three parties, the State, the persons for whose benefit it is created, or *the Corporation as Trustees* for them, and the Donors; the validity of which, depends upon the assent of all the parties. The subjects of the grant are property; the right to acquire and hold property in *perpetuity;* certain obligations are imposed on all the parties to the contract. The State, in granting the charter, parts with its prerogative, never to be resumed (Foy *vs.* The University, Terret *vs.* Taylor,) and it is an implied contract with the other parties, not to re-assert the right to grant the franchise to another, or to impair it in any way. There is also, an implied contract with the

Powell, p. 6.

2 Bl'k. Com. 37.

2 Hey. 9 Church

donors or founders, or such persons as they have delegated to represent them, that they should have a right to visit and govern the corporation, and in case of a dissolution, the reversionary right of the founders to the property, should be preserved *inviolate*. The corporators acquire a right of perpetual succession, of suing and being sued, of purchasing, holding, and selling all kinds of property, of having a common seal and making rules and by-laws for their own government, not contrary to the laws of the land. The obligation imposed upon them, and which is the real consideration of the grant is, that they would act up to the design of the founder, and for which purpose alone, they were created. "If they fail to perform their part, there is an end of the compact."—

3 T. R. 286. King *vs*. Pasmore.

Stoney. Dartmouth College case. "There is also an implied contract between the corporation and every benefactor, upon a like consideration, that it would administer his bounty according to the *terms and for the object stipulated in the charter.*" If such are the principles which govern cases of this nature, we have shown that the charter of 1789 was a grant, a contract; we have shown the obligations imposed upon the contracting parties; we have shown the rights, privileges and advantages which they have acquired, on the one hand, and which have been bestowed by the State, on the other; we have shown that such a grant cannot be resumed, and in case of dissolution of the corporation, there is a reversionary right to the funds in the founder or donors, or, in a case like this, where the founders or donors *are not in being*, in such trustees as this court may appoint acting under its *general jurisdiction*, as to trusts; we have shown that such a contract cannot be impaired without violation of the

4 Wheaton, 518. constitution of the State and of the United States. The Dartmouth College *case alone, is* sufficient authority for that purpose. We have only then to show that the Act of 1834, is in violation of those principles, and *it is void*, which is a matter of evidence. The act of 1834, *in the first place*, repeals the Act of 1789, and by which repeal the grant of 1789 is recalled, which is in violation of the obligation of the State that it would never re-assert *the right to grant the franchise to another, or impair it any way. In the second place*, the Act of 1789, granted the power to the corporation to hold and sell property, real and personal, and to apply the revenues to *the objects* of the bounty, *for all time*—it was *perpetual*. The Act of 1834 is limited *to twenty-one years;* and is not that *a material difference* in the contract? Does not that violate the obligation

of the State with the donors, Drs. Hollingshead and others. Those were not the terms upon which they gave their money. They intended a fixed, permanent and certain charity. One may as well say that a term of years, or a life estate in property, is equal to an absolute and unqualified right, *a fee simple.* By the perpetual charter, the State assured the donors that their beneficiaries should enjoy their bounty for all time. The Act of 1834 limits it to twenty-one years, and the obligation of the contract is impaired in that respect. *In the third place,* by the Act of 1789—(the deed of trust)—*the cestui que trusts or beneficiaries* and *the sole cestui que trusts or beneficiaries* of this Charity, were the Elderly and Disabled Ministers and the Widows and Orphans of the Clergy of the Independent or Congregational Church, in the State of South Carolina, and the Society was called by that name. So clear, so determined were the donors in their purpose, and wishing to be clearly understood to that effect, they not only gave that class of persons their bounty, their charity, but they even called the Charity by their name. The Act of 1834 abolished that corporation and created a new one, called by a new name, and with new beneficiaries. The new corporation is called "The Society for the relief of Elderly and Disabled Ministers and of the Widows and Orphans of the Clergy of the Independent or Congregational Church in the city of Charleston," and the beneficiaries are this new corporation, and the Church of that name in the city of Charleston.

The act of 1834, therefore, changes the charter in *that* respect, and is in violation of the solemn contract of the State with the donors, that their bounty should be bestowed on those for whom they intended it—but there is another obligation growing out of this contract, and one which is equally to be held *inviolable*: that is the contract between the corporators and the donors, which contract is reached by the common law of the land. The corporation have contracted with the donors to administer their funds according to the terms and for the objects stipulated in the charter. Is not the Act of 1834 in direct violation of the obligation of that contract and are not the corporators amenable to law for such violation. The rule of law is clear—where one party violates his contract, the contract is at an end, and he has no more rights in the premises, and the right of property reverts to the donors. If the changes I have enumerated are not essential changes, impairing the rights of the *cestui que trusts,* and vitally affecting the interests and organization of the Society under its old charter, in

fact, if they do not abolish the old charter, it would be difficult to comprehend what was their effect. If these principles are correct legal principles, the Act of the Legislature of South Carolina now in question, impairs the obligation of the charter of 1789, and is consequently unconstitutional and void. But it has been contended that all this is very right, and that the act would have been unconstitutional and void, if the corporators had not assented to those changes—if they had not become parties to the transaction, and willingly surrendered their trust. In fact that they themselves applied to the Legislature to give them power *to transfer the property* which they had contracted to hold for one class of persons to another. I shall proceed to show, that the Trustees of the charity, the corporation, could not consent to the Act of 1834, because they had not the right *to consent*, and an unlawful consent *is no consent*, and cannot divest persons of their fixed rights and interests in property. The relators contend that the corporation took the funds of the donors as Trustees for the *beneficiaries*, and that a trust must always be accepted upon the terms and for the objects for which it was intended. They as trustees could lawfully *do no act* by which they would *denude* their trust and *impair* their contract with the donors and *violate* these duties as Trustees. The Court of Chancery in this State has a general jurisdiction in all matters of charity where the revenues are managed by Trustees, and a bill will lie to compel the Trustees to apply the revenues according to the *foundation*. This general jurisdiction arises upon the principle of trusts, as all trusts are under the supervision of this Court. It is the tribunal, where those who are unable to protect themselves, either in person or property, can either in their own name or in the name of the State, obtain that protection which every government owes *to its incapacitated citizens*. Under this jurisdiction the benevolent may be assured that the objects of their bounty will be protected in their rights and interest, when once secured to them by a lawful charter, for a thousand generations; the believer in a certain religious faith may provide for the laborers for him in the vineyard, and be assured that his bounty will be protected by the laws of the land. We are indebted to the English Chancery for this practice. The general principle is found in 2 Fonb. Equity 207. "As the preservation of every private man's goods is the preservation of the commonwealth in general, so anciently in this realm there were things which belong *to the King* as *Parens Patrie* and fall under the care and direction of this Court, *as Charities, Infants,*

Idiots and so forth, the chancellor was always regarded as the keeper of the Kings conscience; with us the State is *Parens Patrie* and the same offices and duties in relation to the same classes of persons devolve on our Courts of Chancery. In charity cases, the practice has adopted several modes of redress, according to the nature and character of the charity. There is but one mode which concerns us in this case, namely an information filed by the Attorney General at the relation of a Relator. If the charity be created by charter and the donors incorporated, they have their visitorial powers, and if they manage the revenues they are trustees; I have previously shown that this corporation is a lay eleemosynary corporation, and one as to which the rules applicable to civil corpotions *do not apply.*

Lord Mansfield said, in pronouncing judgment in St. John's College case: "The foundation of colleges are to be considered in two views, as they are corporations, and as they are eleemosynary: as eleemosynary, they are the creatures of the *founders;* he may delegate his powers either generally or specially; he may prescribe particular modes and manners as to the exercise of it." Where a charity is established by charter, the revenues are its foundations. It is the creature of the donors, and its objects can only be ascertained from the charter expressing the will of the donor. The corporators managing the revenues are trustees. In a charity of this kind, where the *cestui que trusts* are not in existence, but liable to be in existence, the corporators are trustees to preserve the uses to their benefit, as the trustees represent the interest of all, and hold the legal title for the benefit of all, there can be no complaint, unless there is a breach of trust; then the mode of proceeding is in the hands of the Attorney General, with a relator who may or may not have any interest in the subject matter. In the Attorney General *vs.* Middleton, it was held, "That the interposition of the Court must be referred to the general jurisdiction of the Court, in all cases in which a trust conferred appears to be abused." Story's Equity Jurisprudence to the same point. In this case there are two questions: an abuse of trust, and to restore the revenues of the Charity to its original foundation. I refer also to 3d Black. 427: Whenever it is necessary, the Attorney General, at the relation of some informant who is actually called a relator, files, *ex officio,* an information in the Court of Chancery, to have the Charity properly established. Mr. Hill to the same point: "Any question affecting a charitable trust may be brought

1 Burrows, 200.

2 Vesey, Sr., 328.

Sec. 1191.

3 Bl'k. 427.

Hill Trus. 667 and 668.

before the Court by information in the name of the Attorney-General." Where it is sought to administer or control an established charity under the direction of the Court, there must be an information by the Attorney General. Neither long acquiescence nor the want of a relator will affect the Attorney General's right to proceed, and the relator may or may not have any interest. Where the Court has undertaken to regulate a charity, it will act without any actual complaint, when circumstances come under its notice which require a remedy.——Story's Equity Pleadings. The leading case *in our books* is The Attorney General *vs.* Jolly, which was followed by the Presbyterian Church case, where it was held—"That where a fund was in the hands of trustees for the benefit of a Church, a bill will lie to compel the trustees to apply the funds to the purposes for which it was created."

12 Cl'k. and Fin. 402.

1 Russell 236.

Section 8.

1 Rich. E. 106.

2 Rich. E.

I have now shown that we have a right to complain, and that we are properly before the Court, and will proceed to show that the corporation have not discharged their duties as trustees of this Charity. *The facts are all admitted*, that the corporation is trustee, and as a trustee stands upon the same footing as an individual.—See The Attorney General *vs.* The Foundling Hospital; The Attorney General *vs.* Jolly. We contend that it is law that the trustees should manage and dispose of the trust property as may best promote the charitable purposes of the founders, and that they should be guided *only* by a desire to promote the lasting interest of the Charity. In the celebrated case of The Attorney General *vs.* The Earl.of Mansfield, Lord Eldon said: "My duty is to enforce the trusts as they stand. The founder was the person to say how far his institution was likely to be useful to the public." How well may such doctrine be applied here! In what bold relief do they stand forth to vindicate this Court, and to uphold it in the discharge of its duty! In another case—The Attorney General *vs.* Pearson—his Lordship said: "I apprehend, that when a man gives his money to such an institution for a civil purpose, one of the duties of the Court is to take care that t se who have the management of it shall apply it to no other pu ose, as long as it is capable of being applied according to the o iginal intention."

2 Vesey. Jr., 40.

4 Beaver 458.

2 Beav. 428.

2 Russell, 522.

3 Menville, 358.

It is certain that the beneficiaries under a charter of this kind have such rights and interest in the revenues of the charity as to entitle them to the protection of this Court, and that the Corporators take the fund for their benefit, and can do *no act* by which the trust will be denuded, and that they have no such legal title as will

ntitle *them of right* to dispose of the trust funds ; such are the lecisions of our own Courts. In the case of Bush *vs.* Bush, it vas held to be an acknowledged principle of this Jurisdiction, 'That the power of the Trustee over the legal estate or property ›ested *in him, exists only* for the benefit of the *cestui que trusts ; is a general rule* he can do *no act as legal owner* which prejudices *he rights of the cestui que trusts ;* neither the *fraud* nor *folly,* ıeither *the ignorance* nor *laches* will be permitted to prejudice the ›estui *que trusts.* In Guignard *vs.* Mayrant, " *The waiver* of a Trustee *of the rights* of his *cestui que trusts,* by a contract *executory in its character* and *without a valuable consideration* in behalf of a party who was aware *of the rights of the cestui que trusts,* will not be enforced *to the prejudice of the trust estate.* We cannot have principles *more clearly or more equitably* defined, and if this Court means to adhere to them, if they have become a part of the law of the land and are not *mere sentences* against Bush and against Mayrant, the corporators in this case had no right to consent to a repeal or amendment of the charter of 1789, and they are fully *within the purview* of both decisions. By consenting they have violated that general principle of this Jurisdiction. ' That they hold the legal estate only for the benefit of the *cestui que trusts* and can do no act as legal owners which prejudice the rights of the *cestui que trusts ;* and what have they done in this case. They have actually consented to and done *an act* which deprives their *cestui que trusts* of their rights and interest in the revenues, and they have exercised the legal ownership for that purpose : they have waived the rights of their *cestui que trusts,* without any consideration in behalf of a party who was aware of the rights of the *cestui que trusts.* If these cases are law, this *consent is nugatory,* and the case stands upon the same footing, and is to be governed by the same authorities as if the Act of 1789 had been repealed without the consent of the Corporation. The general rule is, that "a charity must be accepted upon *the same terms* upon which it is given, or *it must be relinquished to the right heir.* Finch Term Reports 221, the Margaret and Regius professor in Cambridge, held "that a charity cannot be altered *by a new agreement* between the heir of *the donors* and *the donees,* where several distinct charities are given to a Parish for several purposes ; *no agreement* of the Parishioners can alter and divert them to any other purpose." There is a Connecticut case which is very much in point ; Langdon *vs.* The Plym. Cong. Ass.

1 Stro. E. 377.

3 Stro. E. 112.

1 Vernon, 55.

Story Eq. Juris 1075.

Ambler 373.

12 Com. 113.

In that case it was decided that in an ecclesiastical Society fo the support of the Ministers of the Gospel in said Society, a permanent fund being subscribed *among themselves for that purpose* the Society *could not be destroyed by a vote of the majority*, even by returning the money *to the original owners*, after having accepted *the funds subject to the terms preseribed by the donors.* This is a case *directly* in point, for it is alleged by the Defendants that the Charter of 1789 was repealed with the consent of the Corporation by a majority vote. If the case quoted above is law, this is no longer an open question, and the Trustees cannot consent and destroy the old Corporation; this case was decided upon general principles, which are these: that a charity must be accepted upon the same terms upon which it is given, and that where all the parties to the contract had assented to the contract, donors and donees, it could not be repealed, altered or amended without their several consent. Mr. Finley in this case, on the similar occasion, represented the minority, and reported his views to the Society. (See Appendix.)

I have shown that the Act of 1834 is unconstitutional and void, because it is repugnant to the Constitution of the State of South Carolina, and of the United States, inasmuch as it deprives freemen of their property *without a trial* by the judgments of their peers, and by the laws of the land, and because it is a law impairing the obligation of contracts. I have shown that a Trustee cannot *denude his trust*, that he takes *the legal ownership* only for the benefit *of the cestui que trusts* and cannot do any act *to prejudice their rights*, that he can do no act to *waive their rights*, by any contract executory in its character and *without a valuable consideration* in behalf of a party *who was aware of their rights* and consequently that the Corporators could *not legally* consent to the repeal of the Act of 1789, so the Act of 1834 was, legally speaking, a repeal *without the consent of the Corporation.*

I have shown that this Court has jurisdiction of this case, and that we have a right to complain (and the important facts being admitted,) that we are entitled to such redress as the nature of the case admits.

We contend therefore, that where there has been an abuse or misuse of the funds of a charity, this Court will make such rules and orders as will secure the application of the fund within the prescribed channel, and will direct an account; and in case of gross abuse or misuse, commit its administration to other

nds. There is no distinction recognized whether the Trustees
e individuals or a Corporation—Green *vs.* Rutherford. The 1 Versey, Jr., p. 468.
inciples upon which the account is to be taken, will be found in
e Attorney General *vs.* the Bailiffs and Burgesses of East Redford. 3 M. & K., 457.
But we have another mode of redress, that of following the funds
to the hands of those who have received them, and we will
ntend that there is a general right in Equity to follow a trust
nd wherever found, so long as it can be designated as such. If
e Act of 1834 is not valid, no one will deny but that donations
the Circular Church are misappropriations of the funds of the
arity; that they have been received by that Church *is admitted,*
d that that Church had notice of the trust, is fully established,
d that they were volunteers, giving no valuable consideration,
s been proved. I will now establish upon authority, the
inciple that has been laid down, and cite Moses *vs.* Montgomery. 1 John. Ch. 128.
exter *vs.* Stewart. In one of our own cases, McNeil *vs.* Mor- 7 do. 55. Rich. Equity cases, 175
w, it was held "so long as property held in trust, or a trust
nd *can be traced,* it will enure to the *benefit* of the *cestui que*
ust," and there is no difference whether the fund be in land or
oney. The right to follow it into the hands of a purchaser for
luable consideration *with notice of the trust,* or into the hands of
volunteer *without* notice of *the trust,* is equally clear. The pur-
aser, under such circumstances, is an implied or constructive
ustee for the benefit of the *cestui que trust,* and for the purposes
the trust, and I shall furnish the Court with authorities as to
e several forms into which such property may be converted, and
ow into whatever form it may be turned; whether land, money,
money converted into land, it is all the same. *The trust is not*
be got rid of, and upon that principle, depends more than any
ther the importance of this jurisdiction, its great value to the
hole country. It is there that the weak and impotent may seek
rotection, *not* only from the world at large, but from those who
re by law constituted their guardians and protectors. In Man-
ell *vs.* Mansell—(*this was land in trust,* and the trustee held the 2 Pere W. 682.
tle for the benefit of a life tenant, with remainder over to
e heirs, male, (in tail) successively. The trustees conveyed
e premises to the life tenant.) It was held "that, had the pre-
ises been conveyed to one without notice, and for a valuable con-
ideration, such purchaser must have held the lands discharged
f the trust, and the son of the marriage, who was injured by the
reach of trust, have his remedy against *the trustees alone,* who

would have decreed to purchase lands with their own mone equal in value to the lands sold, and to hold them upon the san trusts and limitations as they held those sold by them. But eve in the case of a purchaser, if the purchaser had notice of the trus which the trustees *were subject to, as annexed to their estate*, suc notice would have made him liable to the same trusts; so if the had been a voluntary conveyance made of this estate, though wit out notice; the voluntary grantee would have stood in the place of th grantors, and be held liable to the trusts in the same manner t the trustees themselves were; but, in the present case, it is muc stronger; for here, alas! not only notice of the trust, but the co veyance itself voluntary and made to Sir Edward Mansell, th plaintiff's father, (who was the tenant for life) and he was himse *particeps criminis*; nay, one for whose sake and interest all th had been done." It would be difficult to conceive a case mo directly in point.

The case of Mansell *vs.* Mansell is this. The Trustees an one of the beneficiaries have *here as there*, consented to a gra (The Act 1834) to convey the trust estate to the absolute use o one of its own beneficiaries, the Circular Church, who was not only volunteer, but a volunteer with notice, and is within the scope o this case. The act of Mr. Vaughan was decided to be a breac of trust upon the reasoning that it seemed to the Court *in commo sense, reason and justice*, to be capable of no other construction For when Trustees are appointed to preserve an estate and for n other purposes, and they, instead of preserving it, do a wilful ac with an intent and in order to destroy it, can this be otherwis than a plain breach of trust, and how can it be made clearer tha by barely putting the case? Should this Court hold this n breach of trust and upon the principles contended for by the defend ants, it would sweep away all charitable trusts in the State, an all marriage settlements. If in fact Trustees are at liberty in an way to destroy what they were appointed to protect, *the whole sys tem is forever gone.* The same principle applies where the trust fund consisted in money, notes, bills or stocks. The case of Taylo *vs.* Plummer is in point, as to following money of a trust converte into land. In Lench *vs.* Lench, Sir William Grant held "that th purchase was made with trust money, all depends upon the proo of the fact, for whatever doubts may have been formerly entertaine upon the subject, it is now settled, that money may be followe into land, in which it is invested, and a claim of this sort may be sup

3 Maul'd Selwyn 575.

10 Ves. 517.

rted by parol evidence." The money given the Circular Church
as for the most part invested in the buildings on their land,
d this authority is cited to show that the land and buildings are
ble for the trust funds. The case of Taylor *vs.* Plummer is full
to all those points. If such be the principles in general, trusts,
aritable trusts, stand upon a more liberal footing. The defend-
ts have claimed that they are protected by a lapse of time. Leuin 610.
ow as between express trustees and the *cestui que trusts*, there
n be no question *that the statute is inapplicable*—Gunnell *vs.* 2 Rich. E. 260.
yce. But the Circular Church is in this case an implied
constructive trustee, and that implied and constructive trusts
e within the analogy of the statute of limitation. I admit that
ch is the general rule, and that the rule has been recognized in
ir courts in the above case. But freely as I admit the rule, I
ill contend that there are *as positive* and *as well defined excep-*
ons to the rule as the rule itself, and which I will illustrate, both
y authority and upon principle. My proposition is, that no
pse of time will bar a remedy against the constructive trustee *of*
charity in Equity. The first exception is, that the *cestui que*
ust will not be barred from his right to immediate relief by any
ngth of acquiescence, *unless he have* an immediate possessory title
the beneficial interest. Mr. Hill says, "It will be needless to add
at a *cestui que trust*, being an infant, or otherwise *non sui juris*, Hill, 376, Top Paying.
annot be prejudiced by any acquiescence." And the second ex-
eption is, "that trusts for charities are not effected by the statute Idem.
limitations."—Attorney General *vs.* the Mayor of Exetor, Jac.
48. The principles *upon which* these decisions turn are these,
that acquiescence has not the same effect in barring an equita-
le right, where the parties consist of a numerous body of persons,
s creditors or a Society: relief has been decreed in their favor,
fter a lapse of over one hundred years; *and that,* there is an im-
ossibility of any immediate possessory title to the beneficial
nterest in such a charity; an individual beneficiary may be barred
ho has acquiesced for twenty years in the perversion of the
nds, but to say that the beneficiaries generally in a Society of
at sort where they are, or may in some future time become nu-
erous are barred by acquiescence is rather absurd to my mind,
nd at variance with the very nature and character of the Society,
ut there is another exception—*that is,* that the claims are not
arred because they are *non sui juris,* and cannot complain *in their*
wn name; they stand on the same footing *with infants* and *married*

women. They have no capacity to assert their rights, and *no o can hold adversely to them;* they come into Court in the name the Attorney General, the law officer of the State; and the statu does not apply to such proceedings. The law is, that "Th Attorney General, whether suing *ex officio*, or at the relation, not a person having a right to bring an action or a suit in Equit to recover land within the Statute of Limitations."—"Where *a person*, or class of persons, have existed who could institute pr ceedings to redress a wrongful alienation of *charity property*, th Statute of Limitations does not bar suits by the Attorney Genera whether *ex officio* or at relation, to redress the injury." The Atto
18 Beav. 223. ney General, at the relation, *vs.* The Magdalen College, Oxford This judgment comes down to our times, 1854, and is a review all the cases necessary to this subject. In this case it was als held—"That the alienation of charity property is as much a breac of trust if it is conveyed to another charity, as if it were alienate to an individual." So the funds having been appropriated for th benefit of the Circular Church, another charity, can make no di ference at all. In that case, which was similar to this in man points, Sir John Romilly said—as his Honor did say here—"I d not see the slightest cause for imputing any sinister motives, c that the parties did not think they were acting *for the best;* bu they committed an error of judgment, and the transaction canno
17 Beav. 435. be supported." In the case of The Attorney General *vs.* St. Cros Hospital, it was held that—"In cases of charitable trusts, th Court has authority to see them properly performed, notwithstand ing there may be a general or special visitor." That case is on of considerable interest among charity cases. "By charte dated in 1141—it took its origin. Henry de Blois, Bishop c Winchester, brother of King Stephen, committed to the guar dianship and administration of the Master and Brethren of th Hospital of St. John of Jerusalem, the Hospital of the Poor c Christ or St. Cross, for the support, maintenance, lodging an clothing of thirteen poor men, who should reside there perma nently." "Besides these thirteen poor men, one hundred othe poor and modest persons, of the most indigent that can possibl be found, shall be received at the hour of dinner, to whom a coarse loaf of the same weight (as above,) shall be given, and one dis as shall seem meet according to the convenience of the day, an a cup of the same measure; and having left dinner, may be a lowed to take away whatever of food or drink, shall be left over.

very large property was bestowed by the Bishop, including veral Churches. By a charter from the Second Henry, the ospital of St. John assigned the Hospital of St. Cross to Richard e Jocelyne, the then Bishop of Winchester, in 1185, who added other hundred poor, and granted certain property to the Hos- al. The recital clearly expressed the continuance of the trust ich *had already been created.* By a grant from King Richard I, e trust became again vested in the Hospital, dated 10th Sept., 89, repeating the original trusts afterwards. By an award of a pal commission, and by release from the Hospital of St. John, e guardianship became finally vested in the Bishop of Win- ester. In 1336, a commission was issued to inquire whether e custody of the Hospital was without care of souls, and could held with another ecclesiastical benefice. The finding was, at the Hospital was free. "Both before and after the commis- n, great irregularity prevailed in the administration of the arity." The mischief was unremedied until William of Wyke- n, became Bishop of Winchester. He claimed the right of visi- ion, and called on William De Stowell, the then master, to count for the administration of the charity. At first, he resisted, t afterwards submitted. In 1370, he issued another commission inquire into the irregularities and the state of the Hospital. r Roger De Clowne was then Master; he pleaded that the Hos- tal was a perpetual benefice, sinecure, free from all accounting. he Commissioners decided against Sir Roger; he appealed to pe Gregory IV, who issued his Bull to the Bishop of London, recting him to adjudicate and decree what was just. The shop in 1373, decreed against Sir Roger; compelling him to aintain the ordinances of the said Hospital, as a simple ecclesi- tical benefice according to the foundation.

"In 18th Elizabeth, a statute was passed, which, after reciting that the Hospital of St. Cross, near Winchester, was founded in e time of King Stephen, and having continuance ever since with ndry confirmations by the Queen's most noble progenitors, from ne to time, for hospitality and relief of the poor," and after citing that Dr. Reynolds, master of the Hospital, had procured ases to be granted, secured by the seal in his custody to Ralph leverly, to the impoverishment of the same, and in violation the trust reposed in him, "enacted that the leases so made ould be utterly annihilated and made void; that no others should granted;" "that the Hospital should be thereby established

and confirmed for ever," "and its property shall be enjoyed by for ever," to be employed and bestowed to those goodly and char table uses, for the relief and sustenance of the poor, accordin to the lawful orders and consideration of the foundation of th same. Notwithstanding the repeated defeats of the masters t appropriate the revenues in 1696, a document called the "Co suetudinarium," was drawn up by Dr. Markland, the then Maste This document recited that no statutes could be found directin the government and regulation of the Hospital, and that it shoul hereafter be governed by the customs hereinafter stated, by whic it was provided that the master shall rule all persons in the ho pital, and should receive all the revenues, bear the whole charg of the house, keep the church and house in repair, and the ove plus, if any, retain to himself; that he should appoint the Stew ard and Chaplin. This document was confirmed by the Bisho in 1696, with a proviso that nothing therein should derogate fro the statutes of the founder, if any should appear. At that ver time the statutes were in their possession, in the strong box of th Hospital. From 1696 to 1849, the Hospital, with some triflin alteration, had been regulated by the "Consuetudinarium." 1849, an information was filed against the then Master, th Earl of Guilford, and the Bishop of Winchester, praying a schem for the regulation of these charities, and a declaration the "Co suetudinarium," was not a valid or binding document among oth matters and for other relief, *all tending to carry out the original trust* It was held that it was the duty of the Court to enforce the trus *as they relate to the original charity*, and it was so decreed in 185 one hundred and fifty-three years afterwards. Notwithstandin these repeated attempts to defeat this charity, and notwithstanding was perverted for over a century and a half, it was, by the mea of an information in this Court of Chancery, that it was restore *to its original foundation.*

1849
1696
153 years.

It was said by the Master of the Rolls, in speaking of the Co suetudinarium: "To say that a practice so created, and under suc circumstances, merely because it has continued for a century and half, is to prevail against the manifest trusts imposed by the origin foundation, would be contrary to the doctrine daily enforced by th Court, and would be to give a direct premium to *fraud* in the a ministration of charities." "Presumption, arising from time, ha nothing to do with this case." The many singular features exis ing between this *great case* and *the case now before the Court*, ha

induced me to state it at large, hoping that it may serve to guide us to a right decision. *As authorities* that lapse of time will not bar this remedy against the constructive trustee of a charity, I would refer to Adams' Equity, 230, 231, 232. The Attorney General *vs.* Christ Hospital, 3, M. and K., 344; Sugden on Vendors and Purchasers, 436; Story, Equity Jurisprudence, 2 vol., sec. 1192; the Commissioners of Donations *vs.* W'y Crouts. Sir Edward Sugden said: "Now, the old statutes did not interfere *with equitable rights*, but Equity, in analogy to the legal provisions, held time to be a bar, except in some *peculiar cases*, of *which charity was the leading one.*" And again: "By the *ancient rule of Equity, no one could* acquire an estate with notice of a charitable use without being liable to it." I apprehend that I have now shown *that* the Attorney General has a right to follow the funds in the hands of the Circular Church; that there is no material difference whether the fund be land, money, or money converted into land; *that* the remedy against a constructive trustee for a charity is not barred by lapse of time. It has been said, on several occasions, and in the answer of the defendants, that the State has been estopped by the Act of 1834. I confess I do not comprehend the force of the object. The Legislature is not the State. I leave it for the other side to show upon what authority the State could be estopped, by an unconstitutional Act of its Legislature. I have been unable to find a case at all applicable to the point. The Legislature is not omnipotent. It is but a co-ordinant branch of the government, and is no more the State than the executive or judicial branch of the government; and it is the province of this Court, so far from being estopped by the Legislative Act, to go on and pronounce its judgment upon that Act, and if found unconstitutional, to sweep it away from the statute book.

Much has been said as to the foundation of this Society, *that it was not denominational;* as to such a question we must be guided by such evidence as is to be found *in the history of the Society.* The word *Church* in the charter, used in connection with the *locality* specified, is to be construed in connection with such circumstances as surrounded the founders at the time, and we are to derive our knowledge of what was their intention from those circumstances, and those *alone.* The first and best evidence is the original petition of 1789, in which they, speaking in their own language, used the word *Churches,* instead of Church, and *State of South Carolina,* instead of *City of Charleston.* In the charter, in- 2 Jones and La Touche, 182.

stead of the word *Churches*, as in the Petition, the Legislature, and not the Petitioners, adopted the word *Church* for Churches, but gave correctly the specified *locality*, the State of South Carolina. The next evidence is to be found in the preamble and rules of the Society. The preamble begins with these words: "As it is an obligation of the Gospel on Christians, of all denominations, to encourage and support its Ministers, who are their Pastors in the Lord." 1. Rule, That this Society shall be called "The Society for the relief of Elderly and Disabled Ministers, and of the Widows and Orphans of the Clergy of the Independent or Congregational *Church in the State of South Carolina*. Rule II. provides that the anniversary of the Society *be held in "the Independent Church" in Charleston*. Rule III. requires the Secretary and Treasurer to be *residents in Charleston*. Rule IV., clause 2d, provides that every member, *residing in Charleston*, who shall not attend the meetings of the Society, shall forfeit the sum of 2*s*. 6*d*. *Sterling*. The next evidence is furnished from the books of the Circular Church and of the Society; that the relation of debtor and creditor had existed between *the Church and Society*, on several occasions previous to *the Act of* 1834, and that the Society always, until that time, fully recognized the difference between the two corporations; that *after the Act of* 1834, the Society began *to recognize* and *treat* the property as their own, first by cancelling the debts due by the Church to the Society; secondly, by guarantying a debt for the Church, and subsequently paying it, and thirdly, by making an appropriation for the rebuilding the Church; and I believe I am within bounds in saying that since the Act of 1834, *more than one half of the capital of the Society* has been absorbed in appropriations for the benefit of the Circular Church; that the Society prior to the Act of 1834, was not regarded as a part of the Circular Church, and its funds a part of their property, is very fully established by their own proceedings. They deemed it necessary to have their charter amended, in fact repealed, as stated in their answer *to the original bill*, as soon as the charter of 1834 was granted, the rules of the Society were altered to conform to the new state of things. All the circumstances connected with the Society, from its origin to the Act of 1834, show that it was the intention of the founders that their charity should be *denominational—catholic as to the State.*

There can be no doubt *that these pious dissenters* had in their views the similar society established by the Episcopal Church fo

the benefit of their clergy three years previously—a society whose benefits have been felt from the mountain to the seaboard. If these views are correct, and I do not see how they can be otherwise, this charity in its origin was co-extensive with the whole State, and embraced within its scope all Churches of that denomination which do or may exist in that prescribed locality. It has been said, in fact, sneeringly said, that Wappetaw Church was not an Independent or Congregational Church, or at least not so until 1853, when it is alleged that it took that corporate name with a view to acquire an interest in the funds of this society. We will let the facts speak for themselves. It is true that the Wappetaw Church has been at different times chartered by different names, but it is not true that she ever had any other faith and Church government than that professed and held by Independent or Congregational Churches. The Wappetaw Church was incorporated in 1786 by "the name of the Independent Church in Christ Church Parish," with a perpetual charter, and in the Church articles of faith recorded in the old Church Record Book of that date is to be found her Constitution and form of government, and is styled in that Constitution, "The Independent or Congregational Church worshipping at Wappetaw, Christ Church Parish." The articles of faith and form of Church government seem to have been taken from the Circular Church, as they are identically the same in all respects save where the *localities* render a change necessary for such local purposes. 8 Stat. 134.

By an Act passed in 1822, this same Congregation was re-incorporated with a limited charter for fourteen years, as follows: "Those who are now or hereafter shall be members of the Independent or Congregational Church at Wappetaw, in Christ Church Parish, be, and the same are hereby declared a body politic or corporate by the style and title of the Congregation of Wappetaw in the Parish of Christ Church," without repealing the Statute of 1786. In 1836, this charter of 1822 expired, and was renewed for fourteen years without repealing the Act of 1786, and then expired by its own limitation in 1850. In 1853, the same Congregation was incorporated by the name and style of "the Independent or Congregational Church of Wappetaw. During this whole period of time this Congregation held to the same articles of Faith, Constitution and form of government. I will proceed to show the effect of the several Statutes, that the defendants may be informed as to the legal position of that Church; the Charter of 1786 is 8 Stat. 325. 8 Stat. 448. Stat. 236.

perpetual; the Charters of 1822 and 1836 were without any repealing clause, and were only additions or amendments to the Act of 1786, and have expired by their own limitations and are of no effect at all, and have left the Charter of 1786 in full force and effect. What is the law? It is this, that a temporary Statute continues of force unless sooner repealed, until it expires; a perpetual one until it is repealed. If a Statute before perpetual be continued by an affirmative one for a limited time, it does not amount to a repeal thereof at the end of that time. The leading case is in Lord Raymond's Reports, 397, all Statutes on the same subject must be construed in *peri materia*, whether they refer to each other or not. When the last Charter was granted in 1853, the Charter of 1786 was in force. The Act in 1853 does not repeal it, and is like it, perpetual, and is to be construed as an amendment by which the name was changed. But the great principle of law upon which such matters are determined is not by the name, but the faith of the Church, and I did not presume, after the Presbyterian Church case, that it was possible for any such idea to prevail. There are innumerable instances of Churches being called by names not in any way indicative of their faith. There is the new Baptist Church for instance, which has been incorporated by the name of the Citadel Square Church; does that make them less *a Baptist Church? Surely not.* I have now endeavored to bring to the notice of the Court all the legal questions involved in this issue, and as many of the facts as were necessary to give point to my argument, and before leaving the cause to the judgment of the Court, I cannot refrain from alluding to its great importance. The law of this case will be the law of all of our Charitable Institutions. The law of this case will be the law of all of our Trusts, charitable and otherwise, and as one of the officers of this Court, it is my sincere hope that it will be ruled and decided in like manner as Sir John Romilly did the St. Cross Hospital case, to restore the charity to its original trusts, even after it had been perverted for over a century and a half.

[Divans on Stat. 527.

Idem. 534.

2 Bailey, 334, 554.

2 Rich. E. 210.

APPENDIX.

MR. FINLEY'S MINORITY REPORT.

The undersigned, not being able to assent to all of the positions taken in the report of the Chairman of the Committee, begs leave, as a member of the Committee, to submit the following as a separate expression of his own views on the questions involved in the subject referred to them. These questions are:

1st. As to the nature and object of the original trust; next, as to the effect of the charter of 1834; and lastly, as to the denominational status of the Wappetaw Church. On these questions the undersigned, being pressed for time, can present but a very cursory statement of his views, and 1st, as to the nature and object of the original trust, the undersigned thinks it very obvious that this question must be determined by the provisions of the original charter; this bears date March 7, 1789, and is entitled "An Act incorporating the Society for the relief of elderly and disabled ministers, and of the widows and orphans of the Clergy of the Independent or Congregational Church in the State of South Carolina," as the Chairman reports on the petition of Wm. Hollingshead, Isaac S. Keith. Josiah Smith, and sundry other members of the Society, the said Society was incorporated in perpetuity by the name and style of the Society for the relief of elderly and disabled ministers, and of the widows and orphans of the clergy of the Independent or Congregational Church in the *State of South Carolina*. It is very material to observe that the limits within which the benefactions of the Society are to be conferred and enjoyed are by the terms of the charter made co-extensive with the State of South Carolina, and are not restricted to the limits of the city of Charleston. The undersigned, therefore, is at a loss to conceive why the Wappetaw Church, of Christ Church Parish, *if it be an Independent or Congregational Church*, is not as well entitled to enjoy the benefits of this Society, if the original charter is to govern the administration of the trust, as the Circular Church of Charleston itself.

2. The next question is as to the effect of the charter of 1834. It is said that the charter of '34 altered, nay, repealed the original charter of 1789. Indeed, such are the terms of the Act of 1834, as quoted by the Chairman; and the question which now arises is as to the constitutional authority of the Legislature of this State to abolish the charter of '39, and designate a different object and purpose in the administration of the trust from what was prescribed and appointed by that charter. In the opinion of the undersigned, that Act, so far as it aimed to produce any such result, was wholly unconstitutional, null and void, and, therefore, that the rights of the *cestui que trust*, under the original charter, are still unimpaired, and will be enforced by a Court of Equity.

The undersigned is of opinion that the Act of 1834, so far as it contravenes the charter of 1789, is unconstitutional, for the following reasons: wherever funds are given for a specific object, and assuredly all funds given to this Society, prior to the 17th December, 1834, must be considered as given for the objects specified in the charter of 1789; in all cases where funds are given for a specific object a contract is implied, by the principles both of Law and Equity, between the donor and donee, that the funds will be appropriated and expended in accordance with the prescribed objects and purposes, and in *no other* way. Where one accepts funds with a condition annexed, he agrees to fulfil *the* condition. Where one accepts

funds in trust that he will apply them to a certain object, he virtually agrees to perform the trust and apply the funds to that object, and there can be no doubt that if the funds are misapplied, or applied to a different object, it is a breach of the trust, a breach of contract between the donor and the distributee of the fund, and that any one standing in the relation of *cestui que trust*, under the instrument or charter creating the trust, would be entitled to file his bill in a Court of Equity to obtain indemnity for the past and security for the future. There can be no doubt, therefore, in the opinion of the undersigned, that both in Law and Equity there was a contract between this Society and the contributors to its funds prior to the charter of 1834, that these funds should be applied to the relief of elderly and disabled ministers, and the widows and orphans of the clergy of the Independent or Congregational Church in *the State of South Carolina*. Now the Act of '34 comes in and repeals the charter of '89, annuls its provisions, abolishes the trust is created, and appoints new objects, different purposes for the application of the funds of this Society. The undersigned submits whether this be not a clear case of an Act of the Legislature, invalidating a contract, or in the language of the Constitution, "impairing the obligation" of a contract, and therefore, as being in contravention of the Constitution, null, void and of no effect. In the opinion of the undersigned, it makes not the least difference in this case, that the repeal of the original charter was upon the petition of this Corporation. This Corporation was not the only party to the contract, and occupied in relation to the fund, the position simply of a trustee—an agent or distributor of the same, according to the prescribed terms of the donation. Before the original contract could be legally rescinded, the donors who created the fund and the trust, (all of whom, it is presumed, were, in 1834, in their graves,) must have given their consent, and also, (the undersigned should suppose,) the *cestui que trust* who were entitled to the benefit of the original charter. It is hardly to be supposed that the party to the contract which had the least interest in its preservation or continuance, should be authorized by his own act, and it is perhaps not saying too much, by his own wrong, technically to destroy its validity.

The only remaining question which the undersigned will consider, is as to the denominational status of Wappetaw Church. This Church was first incorporated on the 23d March, 1786, with the title of "The Independent Church in Christ Church Parish."

This was prior to the first charter of this Society, and the only question is, whether the Wappetaw Church could claim at that period the title of "an Independent or Congregational Church," within the purview of the provisions of the charter of 1789. The undersigned is of opinion it was properly entitled to this denomination.

The terms "Independent or Congregational," are used in the charter as synonimous, and in fact in the ecclesiastical vocabulary, signifying the same thing. All independent churches are congregational, that is, the supreme authority in the government of the church is vested in the congregation, as contradistinguished from that form of church government where the supreme authority is vested in a Presbytery, Synod, General Assembly or Convention. Under the independent or congregational system, each church is a separate and sovereign community, the congregation possessing the authority of determining all questions in the last resort. Such, we think, was the Constitution of the Wappetaw Church in Christ Church Parish, and such its denominational status, and as such it had a rightful claim to the benefits of this Society.

All of which is respectfully submitted.

W. PERONNEAU FINLEY.

Trials.

L65822 vol.14.

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L 65822 vol.14